Supreme Court, U.S.
FILED
JUL 13 2006
OFFICE OF THE CLERK

(5)

No. 05-669

In The
Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY
and ATLANTIC RICHFIELD COMPANY,

Petitioners,

v.

REBECCA W. WATSON, Assistant Secretary of
the Interior for Land and Mineral Management, *et al.*,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The District Of Columbia Circuit**

AMICUS CURIAE BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether – contrary to the decision below, but consistent with the decisions of the Tenth and Federal Circuits – the limitations period in 28 U.S.C. § 2415(a) applies to federal agency orders requiring the payment of money claimed under a lease or other agreement?

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AMICUS CURIAE BRIEF OF MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

Mountain States Legal Foundation ("MSLF") respectfully submits this *amicus curiae* brief in support of Petitioners. Pursuant to Supreme Court Rule 37(2)(a), this *amicus curiae* brief is filed with the written consent of all the parties.[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

MSLF is a non-profit, public interest legal foundation organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts those issues vital to the defense and preservation of private property rights, individual liberties, limited and ethical government, and the free enterprise system. MSLF's members include businesses and individuals who live and work in nearly every state of the country.

Many of MSLF's members own natural gas operations pursuant to federal leases that are subject to royalty payments like those at issue in this case. Because MSLF and its members have a significant interest in the outcome of this case, MSLF respectfully submits this brief in support of Petitioners.

[1] A copy of Respondents' consent letter has been filed with the Clerk of the Court; and Petitioners filed a blanket consent. In compliance with Supreme Court Rule 37(6), MSLF represents that no counsel for any party authored this brief in whole or in part and that no person or entity, other than the *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

OPINIONS BELOW AND JURISDICTION

Amicus hereby adopts Petitioners' description of the opinions below and statement of jurisdiction. *See* Petition for Writ of *Certiorari* at 1-14.

STATEMENT OF THE CASE

In 1920, Congress enacted the Mineral Leasing Act ("MLA"), 30 U.S.C. § 181, *et seq.*, to authorize the U.S. Department of the Interior ("DOI") to issue and administer oil and gas leases for federal lands. 30 U.S.C. §§ 181-287. To operate oil and gas leases on federal lands, lessees are required to pay a royalty to the Mineral Management Service ("MMS"), a division of the DOI, that is based on the value of the gas.

Petitioners own such leases and have consistently been subject to the royalty payment requirement. On April 22, 1996, the MMS issued a "Dear Operator/Payor" Letter to producers of coalbed methane ("CBM") gas in the vicinity of New Mexico's San Juan Basin. The 1996 Payor Letter provided new "guidelines" to producers on how to report and pay these royalties. Specifically, the MMS claimed a royalty entitlement based on the enhanced value of CBM after transportation to downstream treatment facilities and treatment in those facilities to meet mainline pipeline quality requirements. The 1996 Payor Letter asserted that, for royalty purposes, the CBM's "value" may not be reduced to account for the costs of placing it in marketable condition, and that the CBM was not in marketable condition until it was transported to and treated in gas treatment plants to meet the quality specifications of mainline pipelines.

On May 27, 1997, the MMS issued an order directing Petitioners to pay additional royalties of $4,117,607 because, according to the MMS, Petitioners had calculated and paid royalties improperly dating back to 1989. The order also imposed penalties of up to $10,000 per day for failure to comply with the order.

Petitioners believe that such a demand violates 28 U.S.C. § 2415(a), which provides, in part:

> Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer of agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later . . .

This statute of limitations was not included initially in the MLA, but was added in 1966 and then amended in 1982 to include the phrase, "[t]he provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." 28 U.S.C. § 2415(i).

After exhausting administrative remedies, Petitioners filed suit in the United States District Court for the District of Columbia, which concluded that the statute of limitations does not apply to agency efforts to impose and collect additional royalties through agency proceedings. *Amoco Production Co. v. Baca*, 300 F.Supp.2d 1, 21 (D.D.C. 2003).

The United States Court of Appeals for the District of Columbia affirmed this decision, holding that "an administrative order assessing additional royalties" cannot reasonably be understood to be an "action for money damages" initiated by the filing of a complaint. *Amoco Production Co. v. Watson*, 410 F.3d 722 (D.C. Cir. 2005). Thereafter, Petitioners filed their Petition for Writ of *Certiorari* with this Court, which was granted on April 17, 2006.

SUMMARY OF THE ARGUMENT

Agency orders, such as the MMS's order to Petitioners, fall within the plain meaning of 28 U.S.C. § 2415(a), and, therefore, this Court should reverse the holding of the D.C. Circuit Court. This conclusion is supported by this Court's doctrine that eschews absurd results, such as concluding that administrative agencies may attempt to collect money though the administrative process while being barred from collecting that money through litigation. In addition, the D.C. Circuit wrongly adhered to a canon of construction, which provides that statutes of limitations are to be strictly construed in favor of the government, that is inapplicable both in this specific instance and universally. As a result, this Court should reverse the decision of the D.C. Circuit and hold that administrative orders do fall within the purview of the statute of limitations.

ARGUMENT

Statutes must be interpreted based on the plain meaning of the statutory text. *Barnhart v. Sigmon Coal*

Co., Inc., 534 U.S. 438, 450 (2002) ("As in all statutory construction cases, we begin with the language of the statute."); *Stenberg v. Carhart*, 530 U.S. 914, 983 (2000) (Scalia, J., concurring in judgment in part and dissenting in part). "In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). The textual canon *in pari materia* may be applied to aid in the construction of the statutory text by examining the language and design of the statute as a whole. Under this doctrine, "if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them." *Branch v. Smith*, 538 U.S. 254, 281 (2003), citing *U.S. v. Freeman*, 3 How. 556, 564-565, 11 L.Ed. 724 (1845). If, however, the plain meaning of the statutory text would lead to an absurd result, this Court has concluded that other factors may be taken into consideration. *See, e.g., Watt v. Alaska*, 451 U.S. 259, 285 n.8 (1981).

This case hinges on the interpretation of 28 U.S.C. § 2415(a):

> Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or law, whichever is later. . . .

To determine the applicability of this statute to Petitioners, the D.C. Circuit affirmed the District Court's decision in favor of the MMS because it concluded that "the government's demand for additional royalties is not an action for money damages initiated by the filing of a complaint." *Amoco Production Co.*, 410 F.3d at 735. The court ruled in favor of the MMS, in part, because "statutes of limitations against the sovereign are to be strictly construed [in favor of the government]." *Id.* at 734; *see also E.L. DuPont de Nemours & Co. v. Davis*, 264 U.S. 456, 462 (1924) (In the absence of congressional enactment clearly imposing a statute of limitations on the government, a statute of limitations is to be strictly construed in favor of the government.).

Here, a textual interpretation of the plain meaning of the statute, aided by the canon *in pari materia*, mandates that this Court reverse the opinion below. This Court's precedent, which eschews absurd results, supports this conclusion, particularly when the statute of limitations is fairly and reasonably construed.

I. THE TEXT OF 28 U.S.C. § 2415(a) PLAINLY MEANS, WHEN AIDED BY THE CANON *IN PARI MATERIA*, THAT AGENCY ORDERS FALL WITHIN THE PURVIEW OF THE STATUTE OF LIMITATIONS.

The plain meaning of 28 U.S.C. § 2415(a), when aided by the canon *in pari materia*, is unambiguously clear: administrative orders fall within the purview of the statute of limitations. Any statutory construction begins with its plain meaning. *Barnhart*, 534 U.S. at 450. This analysis requires a careful examination of both the statutory text, as well as the "language and design of the

statute as a whole." *K Mart Corp.*, 486 U.S. at 291. This Court has applied the textual canon *in pari materia* to help interpret the language and design of the statute as a whole. Under this doctrine, "if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them." *Branch*, 538 U.S. at 281, citing *U.S. v. Freeman*, 3 How. 556, 564-65, 11 L.Ed. 724 (1845). Further, the various provisions within one statute should all be taken into account when interpreting a statute. *See, e.g., U.S. v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 139 n.11 (1985). Applying this principle, "when Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Barnhart*, 534 U.S. at 452 (internal citations omitted).

An amendment to the statute, 28 U.S.C. § 2415(i), expressly exempts administrative offsets from the statute of limitations period set forth in 2415(a). An "administrative offset" is not a judicial action. Therefore, if § 2415(a) were limited solely to judicial actions, there would have been no need to legislate a specific exemption for administrative offsets, and such an exemption would yield statutory surplusage, which is disfavored by this Court. *See, e.g., U.S. v. Menasche*, 348 U.S. 528, 538-39 (1955). Notably, the doctrine of *in pari materia* mandates that § 2415(i) be used to help interpret § 2415(a). Therefore, "[e]xamination of the language and the structure of section 2415 leaves the conviction that, absent an express exception, Congress intended that agencies assert their claims within six years or lose the right to enforce them." *U.S. v. Hanover Insurance Co.*, 82 F.3d 1052, 1055 (Fed. Cir. 1996).

II. THE HOLDING OF THE D.C. CIRCUIT COURT OF APPEALS YIELDS AN ABSURD RESULT AND OUGHT TO BE REVERSED.

This Court's precedent that eschews absurd results further leads to the conclusion that the decision below should be reversed. The MMS's order, dated May 27, 1997, demands royalty payments of $4,117,607. It also warns that failure to pay such royalty payments could result in penalties of up to $10,000 per day. Petition for Writ of *Certiorari*, Appendix H. Should Petitioners refuse to make any royalty payments older than six years, the MMS would likely have to file a complaint with a court to collect this money.

Oil and gas leases have long been recognized as "contracts." *See, e.g., OXY USA, Inc. v. Babbitt*, 268 F.3d 1001, 1006 (10th Cir. 2001). Furthermore, an award of "damages" is the relief sought as a result of a breach of contract. *See, e.g., id.* at 1008 (referencing *Farnsworth on Contracts* § 12.8, at 871 (2d ed. 1990)). Therefore, for the MMS to collect, the complaint would have to allege a breach of contract resulting in money damages.

Once the complaint is filed to collect the royalties, the statute of limitations would bar any claim for contract damages beyond the six-year limitations period. By holding that the statute of limitations does not apply to agency actions, the D.C. Circuit's decision effectively permits the MMS to attempt administratively what it would be unable to accomplish judicially. This inconsistency could not possibly have been the intent of Congress in enacting 28 U.S.C. § 2415(a), the purpose of which was to "establish a general statute of limitations on contract claims asserted

by the government or a government agency." *OXY USA, Inc.*, 268 F.3d at 1005. "An interpretation of § 2415 permitting federal agencies to avoid the limitation period by utilizing administrative orders to collect monies owed under contract obviously would thwart this purpose." *Id.* at 1006.

A similarly absurd result would exist if the MMS were to file a complaint to compel Petitioners to pay only the penalties for noncompliance. Though, theoretically, the statute of limitations for the penalties would begin to run the moment the penalties were assessed, it makes little sense to permit the MMS to collect penalties for failure to make a payment that the MMS is barred from collecting. Such a result would not give the parties finality on stale claims. Because this result would be absurd, this Court's own precedent suggests that § 2415(a) should be interpreted more reasonably.

III. THE STATUTE OF LIMITATIONS, 28 U.S.C. § 2415(a), SHOULD NOT BE STRICTLY CONSTRUED IN FAVOR OF THE GOVERNMENT.

When statutes are ambiguous, this Court has relied occasionally upon other methods of construction, such as legislative intent and non-textual canons of construction. *See, e.g., Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232 (2004) (courts must give effect to the unambiguously expressed intent of Congress); *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (legislative history and other canons of construction are useful interpretive tools when a statute is ambiguous). Here, these

additional construction tools further support the conclusion that the decision below should be reversed.

Though this Court should conclude that the plain meaning of the statute unambiguously includes administrative orders, the D.C. Circuit relied, in part, on the canon of construction that provides that statutes of limitations should be strictly construed in favor of the government. First, this canon conflicts with the intent of Congress, and, therefore, should not be applied in this instance. Second, the foundation underlying this canon is weak and the canon ought to be overturned in all instances.

A. The Purpose Of The Canon Of Construction Was Rejected By Congress When 28 U.S.C. § 2415(a) Was Debated, Thus The Canon Ought Not Be Applied In This Instance.

Statutes of limitations exist to prevent limitless and open-ended liability, *see generally* Victor E. Schwartz, *et al.*, *Prosser, Wade & Schwartz's Torts Cases and Materials* 613-619 (10th ed. 2000), and to provide finality to parties' legal obligations and relations, including contracts with the government, as recognized by § 2415(a).[2] This Court

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[2] *See also Bell v. Morrison*, 26 U.S. (1 Pet.) 351, 360 (1828) (Story, J.) (statutes of limitations guard against "stale demands, after the trust state of the transaction may have been forgotten."); *Walker v. Armco Steel Corp.*, 446 U.S. 740, 751 (1980) ("The statute of limitations establishes a deadline after which the defendant may legitimately have peace of mind; it also recognizes that after a certain period of time it is unfair to require the defendant to attempt to piece together his defense to an old claim."); *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1943) (statutes of limitations "promote justice by preventing surprises through the revival of claims

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has concluded that "it is obvious that [statutes of limitations] are an integral part of the legal system and are relied upon to protect the liabilities of persons and corporations active in the commercial sphere." *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, 486 U.S. 888, 893 (1988).

Statutes of limitations also serve valid legal purposes:

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to the well-ordered judicial system . . . The process of discovery and trial . . . is obviously more reliable if the witness or testimony in questions is relatively fresh. Thus . . . there comes a point at which the delay of a plaintiff in asserting a claim is sufficiently likely either to impair the accuracy of the fact-finding process or to upset the settled expectations that a substantive claim will be barred . . .

Board of Regents of University of State of N.Y. v. Tomanio, 446 U.S. 478, 486 (1980).

Balanced against these valid, important purposes of statutes of limitations is the canon of construction that provides that, in the absence of a congressional enactment, such statutes are to be strictly construed in favor of the government. The purpose for such a canon was to protect the public from the prejudice that could result from the negligence of governmental officers in their untimely filing of claims. *U.S. v. Nashville, C. & St. L. Ry. Co.*, 118 U.S. 120 (1886).

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that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.").

With regard to § 2415(a), however, this public purpose was rejected by Congress, which enacted § 2415(a) "to promote fairness . . . notwithstanding whatever prejudice might accrue thereby to the Government as a result of the negligence of its officers." *Hanover Insurance Co.*, 82 F.3d at 1055. Therefore, specifically with regard to § 2415(a), the canon ought to be rejected, and the statute should not be strictly construed in favor of the government. *See, e.g.*, *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 262 (2005) (Rehnquist, J., dissenting from denial of *certiorari* to, instead, expressly affirm the decision, below) ("Even venerable canons of construction must bow, in an appropriate case, to compelling evidence of congressional intent."); *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 507 n.16 (1986) ("A canon of construction is not a license to disregard clear expressions of . . . congressional intent."). Instead, the aforementioned justifications warrant a statutory interpretation whereby the protections provided by the statute are not limited by the canon of construction in favor of the government.

B. The Canon Of Construction Whereby Statutes Of Limitations Are To Be Strictly Construed In Favor Of The Government, Is Illogical And Should Not Be Applied Under Any Circumstances.

"The doctrine of *stare decisis* is essential to the respect accorded to the judgments of this Court and to the stability of the law," *Lawrence v. Texas*, 539 U.S. 558, 577 (2003) (wherein the Court expressly overruled *Bowers v. Hardwick*, 478 U.S. 186 (1986)). However, that doctrine is "not an inexorable command []." *Dickerson v. U.S.*, 530 U.S.

428, 443 (2000) (quoting *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (expressly overruling *Albrecht v. Herald Co.*, 390 U.S. 145 (1968)); *Agostini v. Felton*, 521 U.S. 203, 235 (1997) (abandoning a strict application of *stare decisis*). Instead, it is a mere "principle of policy." *Lawrence*, 539 U.S. at 577. Therefore, "[i]n prior cases, when this Court has confronted a wrongly decided, unworkable precedent calling for some further action by the Court, [the Court has] chosen not to compound the original error, but to overrule the precedent." *Payne v. Tennessee*, 501 U.S. 808 (1991) (Souter, J., concurring) (wherein the Court partially overruled *Booth v. Maryland*, 482 U.S. 496 (1987) and *South Carolina v. Gathers*, 490 U.S. 805 (1989)). The canon of construction upon which the D.C. Circuit partially relied, which provides that statutes of limitations are to be strictly construed in favor of the sovereign, is absurd and poorly reasoned and ought to be overruled.

Many statutes of limitations are imposed by the legislature on individuals. *See, e.g.*, 28 U.S.C. § 2244(d)(1) (imposing a statute of limitations on the filing of a *habeas corpus* petition). These statutes, which limit the rights of action available to individuals, are not strictly construed in favor of the individual, despite that the individuals had no influence in the statutes' enactment. Yet pursuant to the canon of construction, statutes that limit the rights of action available to the government are strictly construed in favor of the government even though the limitation is self-imposed.

This makes little sense. Because Congress has the power to protect itself from the limitations imposed by a statute of limitations, it can repeal an enacted statute of limitations or reject it before it becomes law. In other words, should Congress believe that a particular statute of

limitations overly restricts the rights of the government to seek redress, Congress may amend or repeal that statute. Individuals, on the other hand, have no such power. Therefore, the canon that provides for a strict construction of statutes of limitations in favor of the government cannot be justified.

A similar theory, known as "*contra proferentem*," is commonly applied in contract law, though it has been used occasionally in statutory construction. *See, e.g., Germantown Pass. Ry. Co. v. Citizens' Pass. Ry. Co.*, 24 A. 1103, 1104, 151 Pa. 138, 140 (Pa. 1892); Larry A. DiMatteo, *Equity's Modification of Contract: An Analysis of the Twentieth Century's Equitable Reformation of Contract Law*, 33 New Eng. L. Rev. 265, n.584 (Winter 1999) ("The concept of strict construction against the drafter can be found throughout Anglo-American Jurisprudence in both statutory and non-statutory interpretations."). The doctrine provides that "In interpreting documents, ambiguities are to be construed unfavorably to the drafter," Black's Law Dictionary 328 (7th ed. 1999); *see also* Restatement (Second) of Contracts § 206 (1981), "because the drafter is the party in a position to correct the ambiguity." *Gunn v. Principal Cas. Ins. Co.*, 605 So.2d 741, 746 (Miss. 1992); *see also U.S. v. Seckinger*, 397 U.S. 203, 216 (1970) (doctrine of *contra proferentem* is given "considerable emphasis" in construing a government contract "because of the government's vast economic resources and stronger bargaining position."). Following this same reasoning, an ambiguous statute of limitations that restricts the right of the government to seek redress should not be strictly construed in favor of the government and, if anything, should be strictly construed against the government.

Ultimately, such a canon of construction, which creates preferential rules and presumptions, obfuscates the statutory interpretation process. "It is hard enough to provide a uniform, objective answer to the question whether a statute, on balance, more reasonably means one thing than another. But it is virtually impossible to expect uniformity and objectivity when there is added, on one or the other side of the balance, a thumb of indeterminate weight." Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 28 (Princeton University Press 1997). Given these considerations, this Court should reject the canon of construction that mandates a strict construction of statutes of limitations in favor of the government, and reverse the decision below.

CONCLUSION

Agency orders, such as the MMS's order to Petitioners, fall within the purview of 28 U.S.C. § 2415(a), when textually construed, and therefore this Court should reverse the holding of the D.C. Circuit Court. This "plain meaning" interpretation is supported by this Court's doctrine that eschews absurd results. Here, the D.C. Circuit Court's conclusion that the text of § 2415(a) places a time limitation only on judicial actions leads to an absurd result whereby an administrative agency could attempt to collect money though the administrative process while being barred from judicial enforcement of this administrative decision. Additionally, a reversal is supported both by the purpose of § 2415(a) and by logic, which mandates that this Court reject the canon of construction, which construes statutes of limitation in favor of the government, that underlies the erroneous decision of

the court below. Therefore, Mountain States Legal Foundation respectfully requests that this Court reverse the decision of the D.C. Circuit Court and hold that § 2415(a) does apply to administrative orders.

Respectfully submitted:

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